

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR. K.M.ABRAHAM, WHOLE TIME MEMBER

ORDER

**UNDER REGULATIONS 28(2) OF SECURITIES AND EXCHANGE BOARD
OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 AGAINST M/S SANJAY
CAPITAL SERVICES PRIVATE LIMITED**

Date of hearing: February 18, 2009

Appearance:

For Sanjay Capital Services Private Limited : Mr. O.P. Gupta, Director

For Securities and Exchange Board of India : Mr. Achal Singh, Deputy General Manager
Mr. Rakesh Kumar Singh, Legal Officer

1. Securities and Exchange Board of India (hereinafter referred to as SEBI) noticed unusual price movement in the shares of Karishma Floriculture Limited (hereinafter referred to as the company) at Delhi Stock Exchange Limited (hereinafter referred to as DSE) during the period August 1, 1995 to January 08, 1996. The share price of the company increased from Rs. 11/- on August 1, 1995 to Rs. 27.25/- on August 29, 1995. Thereafter, the share price was further increased to Rs. 31.87/- on January 08, 1996. On being *prima facie* satisfied about the price manipulation in the scrip of the company, SEBI conducted an investigation in respect of the buying, selling and dealing in the shares of the company during the above period. The investigation conducted by SEBI found that M/s O.P Gupta & Co (now known as Sanjay Capital Services Private Limited), Member, DSE, traded substantially in the shares of the company

during the above period on behalf of Mr. S. N. Bansal (through his associate Nippin Investment) promoter of the company. Sanjay Capital Services Private Limited/ M/s O.P. Gupta & Co. is hereinafter referred to as the stock broker for the sake of brevity. Though, the stock broker purchased 13,26,900 shares and sold 7,49,000 shares of the company during April 1995 to May 1996, the trading was mainly concentrated in the month of August 1995. The gross trading by stock broker in August 1995 was of 9,92,000 shares, which was around 47% of total trading of stock broker in the shares of the company during April 1995 to May 1996. During August 11, 1995 to August 29, 1995 (as stated above), the stock broker purchased 6,56,000 shares of the company and sold 3,33,800 shares which accounted for 11.40% of the total shares traded at DSE during the relevant period. The stock broker's buying constituted 15.12% of total buying at DSE during August 11-29, 1995. It was also revealed that the stock broker had made false submissions during the course of investigation. It was *inter alia* alleged that the stock broker *prima facie* violated Clauses A(2), A(3), A(4) and C(6) of the Code of Conduct prescribed for stock brokers under Schedule II of the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as the Broker Regulations) and also dealt with unregistered sub-broker in violation of SEBI circular dated December 27, 2003. The stock broker had executed off market deals for their clients, *prima facie* in violation of SEBI Circular No. SMD/RCG/CIR(BKG)/293/95 dated March 14, 1995 which *inter alia* provides for reporting of all "off the floor transactions."

2. In view of the above, SEBI, vide order dated July 30, 2004 read with a subsequent order dated November 8, 2004 appointed an Enquiry Officer under the provisions of Securities and Exchange Board of India (Procedure for Holding Enquiry by the Enquiry Officer and Imposing Penalty) Regulations, 2002 (since repealed) to enquire into the alleged violations committed by the

stock broker. The Enquiry Officer, vide report dated November 27, 2006 recommended that the certificate of registration of the stock broker be suspended for a period of five days.

3. Thereafter, a notice dated December 06, 2006 was issued by SEBI to the stock broker, asking it to show cause as to why the penalty as recommended by the Enquiry Officer should not be imposed on it. A copy of the Enquiry Report was also forwarded to the stock broker with the said show cause notice. In reply to the said show cause notice, the stock broker, vide letter dated December 21, 2006 *inter alia* stated that it had bought the shareholding of M/s. O.P. Gupta & Co. in the DSE after executing a transfer deed. However, according to the stock broker, it had not bought the running business of M/s. O.P. Gupta & Co. It also contended that the stock broker and M/s. O.P. Gupta & Co. are two separate legal entities. According to the stock broker, it is not liable for the acts of omissions and commissions of M/s. O.P. Gupta & Co. The stock broker further contended that it had not given any undertaking to DSE or SEBI, in this regard. The stock broker claimed that it was granted fresh certificate of registration. It also contended that, in the absence of a notice, the findings of the Enquiry Officer are not binding on it. Thereafter, the stock broker, vide letter dated February 2, 2009 *inter alia* stated that M/s. O.P. Gupta & Co is liable for its violations of the provisions of SEBI Act.

4. Subsequently, an opportunity of hearing was granted to the stock broker on June 1, 2007. However, the said hearing was postponed as per the request of the stock broker. Subsequently the stock broker availed the opportunity of hearing granted to it, on February 18, 2009. Mr. O. P. Gupta represented the stock broker and made submissions on the lines of the reply dated December 21, 2006 of the stock broker. Pursuant to the hearing, the stock broker, vide letter dated March 13, 2009 stated that it cannot be held responsible for the

acts of omission or commission prior to its incorporation. In this regard, the stock broker placed his reliance on the decision of the Hon'ble Securities Appellate Tribunal, Mumbai in the matter of S.K.D.C. Consultants Limited V/s. Sri Sairam.

5. I have considered the show cause notice issued to the stock broker, its oral as well as written submissions and other materials available on record. The main contention of the stock broker is that it is not liable for the acts of omissions or commissions of the erstwhile stock broker (M/s. O.P Gupta & Co.). The fact that the stock broker, M/s. O.P. Gupta & Co. had executed substantial trades in the shares of the company during the period of investigation is not disputed. As already mentioned, during August 11, 1995 to August 29, 1995, the said stock broker had purchased 6,65,000 shares and sold 3,33,800 shares of the company which accounted for 11.40% of the total shares traded at DSE. The stock broker's buying constituted 15.12% of total buying at DSE during August 11-29, 1995. It is also not in dispute that on certain days, the stock broker's trading at DSE was found to be substantial, as shown below:

Date	Buy	Sell	Gross	Gross as % of Volume at DSE	Share Price Movement (in Rs)
11.08.95	1,90,100	51,200	2,41,300	24.01%	Rose to Rs 19.25/- from previous day close of Rs 17/-
14.08.95	52,000	7,200	59,200	5.11%	Rose to Rs 21/- from previous day close of Rs 19.25/-
16.08.95	41,300	96,400	1,37,700	23.65%	Rose to Rs 22/- from previous day close of Rs 21/-
17.08.95	55,000	40,600	95,600	22.45%	Rose to Rs 21.75/- from previous day close of Rs 20.62/-
21.08.95	17,400	36,500	53,900	13.28%	Rose to Rs 21.25/- from previous day close of Rs 20/-
29.08.95	2,73,400	78,200	3,56,100	10.94%	Rose to Rs 27.25/- from previous day close of Rs 24/-

30.08.95	52,700	00	52,700	5.61%	Rose to Rs 26.50/- from previous day close of Rs 24.75/-
Total	6,81,900	3,10,100	9,92,000		

It can be seen that the price of the shares of the company increased on the aforesaid dates.

6. Admittedly, the stock broker executed proprietary trades [(buy– 6,49,300) and (sell – 6,56,600)] in the shares of the company during the period April 1, 1995 to May 31, 1996. The transactions of the stock broker were considered and examined by the Enquiry Officer in the Enquiry Report dated November 27, 2006. No effort was taken by the stock broker to controvert the findings of the investigations. Further, the contention of the stock broker that it was not granted any opportunity to inspect the documents or was not provided with the copies of documents is false and incorrect. I note that SEBI, vide letter dated May 13, 2005 forwarded copies of documents relied upon in the preparation of show cause notice. The said letter was addressed to “M/s. O.P. Gupta & co. (now Sanjay Capital Services Private Limited)”. The said letter was issued pursuant to a request made by the stock broker. As the stock broker did not controvert the findings of the Enquiry Officer in respect of the transactions executed by it, I do not consider it necessary to reiterate the transactions of the stock broker in detail. It is seen that the stock broker was the largest buyer and the fourth largest seller in the scrip of the company during the period of investigation. As per information furnished by the stock broker, it had traded mainly for M/s Nippin Investment, which is an associate of Mr. S.N.Bansal, the promoter of the company. Besides executing large number of transactions, the stock broker received a payment of Rs.2 lakh on December 07, 1995 from M/s. SRP Investment for the purchase of shares made by M/s. Nippin Investment. This would indicate that the entity behind the purchases made by M/s. Nippin Investment was M/s. SRP Investments. The acceptance of such cheques by an

entity closely related to Mr. S. N. Bansal reinforces the connection between the stock broker, M/s. Nippin Investment, M/s. SRP Investment and Mr. S. N. Bansal. The Enquiry Officer found that the stock broker dealt with an unregistered sub-broker in violation of SEBI Circular dated December 27, 1993. Further, I also note that the Enquiry Officer found that the stock broker executed off-market deals for its clients in violation of SEBI Circular March 14, 1995. This finding of the Enquiry Officer was based on the documents submitted by the DSE and the stock broker in respect of the transactions executed by the stock broker in the shares of the company. The reasons for such finding have been elaborately explained by the Enquiry Officer. The facts and circumstances of the case clearly establish the role of the stock broker in the manipulative transactions executed in the shares of the company, which distorted the market equilibrium. By indulging in such transactions, the stock broker created false market in the shares of the company which is detrimental to the interest of the investors. Thus, it is established that the stock broker had violated Clauses A(2), (3) and (4) and C (6) of the Code of Conduct prescribed for stock broker under Schedule II of the Stock Brokers Regulations. The stock broker also contravened the provisions of SEBI Circular dated December 27, 1993.

7. The main contention raised by the stock broker before me is that it is not liable for the irregularities committed by the erstwhile broker (M/s. O.P. Gupta & Co.). I am unable to accept the submission of the stock broker in this regard for the following reasons. According to the stock broker, Mr. O.P. Gupta had transferred his membership in DSE to M/s. Sanjay Capital Services Private Limited for consideration, and subsequently the latter was granted a fresh certificate of registration as a stock broker. From the material on record, it is noted that the entity M/s O. P. Gupta & Co was a proprietorship concern of Mr. O. P. Gupta. Subsequently, the said proprietorship concern was transformed / converted into a corporate entity in the name of Sanjay Capital

Services Private Limited. Admittedly, Sanjay Capital Services Private Limited has two directors i.e. Mr. O. P. Gupta and his son Mr. Sanjay Gupta. Majority of the notices / letters addressed to the stock broker during the enquiry proceedings were signed by Mr. O. P. Gupta. Besides, Mr. O. P. Gupta and his son, Mr. Rahul Gupta appeared when the proceedings was pending before the Enquiry Officer. Even during the course of the personal hearing before me, Mr. O. P. Gupta represented the stock broker and made submissions on its behalf. I further note that the stock broker is a family concern of Mr. O. P. Gupta and the entire shareholding of the stock broker is being held by Mr. O. P. Gupta and his close relatives including his son and brother. Further, majority of the shareholding in the stock broker is being held by Mr. O. P. Gupta. It is a settled principle that when the corporate personality is being blatantly used as a cloak for fraud or improper conduct, the concept of lifting of corporate veil would be brought in to punish the real culprits so as to enable the competent authorities to pass appropriate orders to do justice. The Hon'ble Courts have further shown themselves willing to '*lifting the veil*' when the device of incorporation is used for some illegal or improper purpose. The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities, escape punishment or to defraud people.

8. The case law (S.K.D.C. Consultants Limited vs. Shri P. Sri Sai Ram, Adjudicating Officer, SEBI) cited by the stock broker would not be strictly applicable to the facts and circumstances of the present case. In the said case, a proprietary concern was converted into a limited company, whereas in the present matter, the conversion was into a private limited company, where the majority of the shareholding in the company is with the proprietor of the erstwhile stock broker. Besides, the entire shareholding in the company is with the proprietor and his relatives, making it a family concern. In view of the aforesaid, I am unable to accept the contention of stock broker that it is not

liable for irregularities committed by M/s. O. P. Gupta & Co.

9. Further, the stock broker contended that no notice under any provisions of law had been served on it (Sanjay Capital Services Private Limited) in respect of its dealing in the shares of the company. This contention is without merit as the show cause notice dated November 27, 2004 under Regulation 6 of the Enquiry Regulations was issued to "M/s. O.P. Gupta & Co. (now Sanjay Capital Services Private Limited)". Mr. O. P. Gupta had represented the stock broker and made submissions on its behalf during the personal hearing before me. This would only suggest that the stock broker was given adequate notice and opportunity to defend and present its stand, thereby not putting it to any disadvantage. The actions of the stock broker make it responsible of the charges levied against it. Besides, the stock broker did not controvert the specific findings of the Enquiry Officer in respect of the manipulations. In the facts and circumstances, I concur with the findings of the Enquiry Officer. Considering the totality of the facts and circumstances of the case, I dispose of the present proceedings as ordered herein under.

10. I note that the present case has been initiated under the provisions of the Enquiry Regulations, 2002. Subsequently, in 2008, the Enquiry Regulations were repealed by the Securities and Exchange Board of India (Intermediaries) Regulations, 2008. Therefore, this order is being issued under the corresponding provisions of the Securities and Exchange Board of India (Intermediaries Regulations), 2008.

11. In view of the foregoing, in exercise of the powers conferred on me in terms of Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, Sanjay Capital Services Private Limited

(stock broker) is hereby warned for the deviations observed herein from the provisions of the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 and the Circulars, as mentioned above in this order, that regulate its function as a registered intermediary of Securities and Exchange Board of India and directed to strictly abide by laws, rules and regulations that govern dealings in the securities market .

**K. M. ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**

Place: Mumbai

Date: May 29, 2009